

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

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June 24, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 197:2, a STATUTE that permits an official ballot school district to hold a special school district meeting in conjunction with the biennial election, most recently amended by Laws of 2005 Chapter 83 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 197:2, a STATUTE that permits an official ballot school district to hold a special school district meeting in conjunction with the biennial election, most recently amended by Laws of 2005 Chapter 83 and previously amended by the chapters cited below.

SUBMISSION

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 83 (2005) amending RSA 197:2 is attached (Exhibit 197:2 A)
 - 1. Chapter 370 (1991) amending RSA 197:2 is attached (Exhibit 197:2 B)
 - 2. Chapter 104 (1969) amending RSA 197:2 is attached (Exhibit 197:2 C)

- b) The 1955 version of RSA 197:2 is attached to show the RSA in its pre-1968 state (Exhibit 197:2 D)
- c) The changes made by amendments to RSA 197:2 are as follows:
 - 1. Chapter 83 (2005) replaced the phrase *"In no event shall a"* with the words *"No"* and *"shall"* and added the phrase *"except when a special school district meeting has been approved by the court and a school district has adopted the official ballot referendum form of meeting pursuant to RSA 40:14."*
 - 2. Chapter 370 (1991) added the phrase *"In no event shall a special school district meeting be held in conjunction with the biennial election."*
 - 3. Chapter 104 (1969) substituted *"50 or more voters, or 1/4"* for *"10 or more voters, or 1/6"* preceding *"of the voters"*.
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State's legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 83 (Exhibit 197:2 A). The bill was signed into law (by the Governor) on May 10, 2005, pursuant to New Hampshire Constitution Part Second, Article 44.

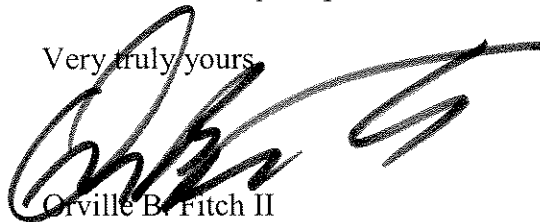
- i) Adoption dates:

1. Chapter 83 (2005) adopted June 7, 2005
 2. Chapter 370 (1991) adopted July 2, 1991
 3. Chapter 104 (1969) adopted April 25, 1969
- j) Effective dates:
1. Chapter 83 (2005) effective August 6, 2005
 2. Chapter 370 (1991) effective August 31, 1991
 3. Chapter 104 (1969) effective June 24, 1969
- k) The changes made by Chapter 83 (2005) have not been enforced. The changes made by the laws of 1991, Chapter 370, and the laws of 1969, Chapter 104 have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose of the changes are as follows:
1. The purpose of the Chapter 83 (2005) change is provide a procedure for special school district meetings to be held on the same day as the biennial (State and Federal) election. This chapter creates the requirements a district would need to meet in order to hold the meeting.
 2. The purpose of the Chapter 370 (1991) change is to make sure that no special school district special meetings were held on the same day as the biennial election. At the time of its adoption the prohibition was without exception.
 3. The purpose of the Chapter 104 (1969) change is to change the requirements for how many voters of a district were required in order to call a special school district meeting. The legislature thought that the previous numbers were too low and approved a modest increase to the requirement.
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups...to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).

- o) None known.
- p) RSA 197:2 has never been pre-cleared. This submission seeks pre-clearance of all changes since 1968.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 197:2 E is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

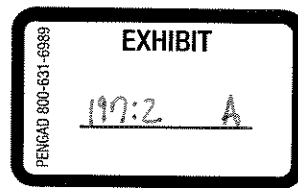
Very truly yours,



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CHAPTER 83
SB 40 – FINAL VERSION



03/10/05 0456s

2005 SESSION

05-0772

03/04

SENATE BILL **40**

AN ACT permitting special school district meetings to be held in conjunction with the biennial election in certain school districts.

SPONSORS: Sen. Johnson, Dist 2; Rep. B. Williams, Graf 8

COMMITTEE: Internal Affairs

ANALYSIS

This bill permits an official ballot school district to hold a special school district meeting in conjunction with the biennial election.

Explanation: Matter added to current law appears in **bold italics**.

Matter removed from current law appears [~~in brackets and struckthrough~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/10/05 0456s

05-0772

03/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Five

AN ACT permitting special school district meetings to be held in conjunction with the biennial election in certain school districts.

Be it Enacted by the Senate and House of Representatives in General Court convened:

83:1 Special School Meetings; Exception to Prohibition. Amend RSA 197:2 to read as follows:

197:2 Special. A special meeting of a school district shall be held whenever, in the opinion of the school board, there is occasion therefor, or whenever 50 or more voters, or 1/4 of the voters of the district, whichever is less, shall have made written application to the school board therefor, setting forth the subject matter upon which action is desired. [~~In no event~~]

~~shall be~~ No special school district meeting ***shall*** be held in conjunction with the biennial election, ***except when a special school district meeting has been approved by the court and a school district has adopted the official ballot referendum form of meeting pursuant to RSA 40:14.***

83:2 Effective Date. This act shall take effect 60 days after its passage.

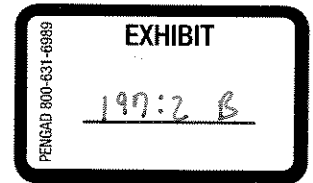
(Approved: June 7, 2005)

(Effective Date: August 6, 2005)

5/21/91 2968s **1991 SESSION** 1099L

12june91...CofC Rpt...3201h 91-0937

6/17/91....3356L-EBA



10

Enrolled Bill AmendmentHOUSE BILL NO. 532-FN (CHAPTER 370, LAWS OF 1991)

INTRODUCED BY: Rep. Scanlan of Grafton Dist. 11

REFERRED TO: Constitutional and Statutory Revision

AN ACT relative to the color of ballots used in municipal elections and relative to the time for holding town and district business meetings and elections.

AMENDED ANALYSIS

This bill provides that if a city or town uses more than one ballot in a municipal election, each ballot shall be a different color.

The bill also prohibits towns and school districts from holding regular business meetings or elections on biennial election day, except for the school districts in Concord, Laconia, and Keene.

EXPLANATION: Matter added appears in **bold italics**.

Matter removed appears in [brackets].

Matter which is repealed and reenacted or all new appears in regular type.

1099L

91-0937

10

Enrolled Bill Amendment

HB 532

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand

nine hundred and ninety-one

AN ACT

relative to the color of ballots used in municipal elections and

relative to the time for holding town and district

business meetings and elections.

Be it Enacted by the Senate and House of Represen-

tatives in General Court convened:

1 New Section; Color of Ballots. Amend RSA 44 by inserting after section 19 the following new section:

44:20 Color of Ballots. In cities which use more than one ballot during any city election, each ballot shall be of a different color than any other ballot used at the election.

2 Color of Ballot. Amend RSA 669:24 to read as follows:

669:24 Paper, Uniformity, Endorsement. The ballots shall be printed on plain white paper, in weight not less than that of ordinary printing paper[.] ; **provided, however, that if more than one ballot is used during any town election, each ballot shall be of a different color than any other ballot used at the election.** There shall be no impression or mark to distinguish one ballot from another. The names of all candidates shall be printed in uniform type and the ballots shall be folded so that their width

and length when folded shall be uniform. On the back, or at the top of the face, of each ballot shall be printed the words "Official Ballot for the Town of", the date of the election and a facsimile of the signature of the town clerk who prepared the ballot.

3 Color of Ballot. Amend RSA 669:55 to read as follows:

669:55 Ballots. In the election of officers by unofficial ballot, the town clerk shall prepare and provide to the moderator pieces of white paper of uniform size and weight to be used as ballots [.] ; **provided, however, that if more than one ballot is used during any town election, each ballot shall be of a different color than any other ballot used at the election.** The ballots may, at the discretion of the clerk, have printed on them the names of the offices to be elected, such as "For Selectman," or "For Town Treasurer." However, no names of candidates shall be printed on the unofficial ballots.

4 Limitation on Time for Holding Special Town Meeting. Amend RSA 39:1 to read as follows:

39:1 Meetings, When Held. A meeting of every town shall be held annually on the second

Tuesday of March for the choice of town officers and the transaction of all other town business. A town meeting may be warned by the selectmen, when, in their opinion, there shall be occasion therefor. **In no event shall a special town meeting be held on the biennial election day.**

5 Limitation on Time for Holding Special Town Meeting. Amend RSA 39:3 to read as follows:

39:3 Articles. Upon the written application of 25 or more registered voters or 2 percent of the registered voters in town, whichever is less, although in no event shall fewer than 10 registered voters be sufficient,

presented to the selectmen or one of them not later than the fifth Tuesday before the day prescribed for an annual [or biennial] meeting, the selectmen shall insert in their warrant for such meeting the petitioned article with only such minor textual changes as may be required. For the purposes of this section, the number of registered voters in a town shall be the number of voters registered prior to the last state general election. The right to have an article inserted in the warrant conferred by this section shall not be invalidated by the provisions of RSA 32. Upon the written application of 50 or more voters or 1/4 of the voters in town, whichever is fewer, so presented not less than 60 days before the next annual meeting, the selectmen shall warn a special meeting to act upon any question specified in such application. The checklist for an annual or special town meeting shall be corrected by the supervisors of the checklist as provided in RSA 654:25-31, except that the session 3 weeks before the meeting shall not be required. Those persons qualified to vote whose names are on the corrected checklist shall be entitled to vote at the meeting. The same checklist used at a recessed town meeting shall be used at any reconvened session of the same town meeting. **In no event shall a special town meeting be held on the biennial election day.**

6 Special School Meeting. Amend RSA 197:2 to read as follows:

197:2 Special. A special meeting of a school district shall be held whenever, in the opinion of the school board, there is occasion therefor, or whenever 50 or more voters, or 1/4 of the voters of the district, whichever is less, shall have made written application to the school board therefor, setting forth the subject matter upon which action is desired. **In no event shall a special school district meeting be held in conjunction with the biennial election.**

7 New Paragraph; Town Election. Amend RSA 669:1 by inserting after paragraph II the following new paragraph:

III. No town election shall be held in conjunction with the biennial election.

8 School District Election. Amend RSA 671:2 to read as follows:

671:2 Election Dates. School district officers shall be elected either at the town meeting as provided in RSA 671:22-26 or at an annual meeting of the district held between the dates set forth in RSA 197:1. **Notwithstanding any other provision of law including the provisions of 1969, 618 relative to the time for holding school district elections in the city of Claremont, no election for school district officers shall be held in conjunction with the biennial election. The prohibition in this section against holding an election for school district officers in conjunction with the biennial election shall not apply to the election of the board of education members of the Concord union school district as provided in 1961, 355 as amended by 1983, 123, to the election of the Laconia board of education members as provided in section 9:01 of the city charter of Laconia as amended by 1975, 357, or to the**

election of the school board members of the union school district of the city of Keene, as provided in 1967, 566.

9 Effective Date. This act shall take effect 60 days after its passage.

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104:5 Repeal. RSA 189:41 relative to attendance at teachers' institutes hereby repealed.

10447 Definition of School District Extended. Amend RSA 195-A:1, inserted by 1963, 277:1 by striking out said paragraph and inserting in its place the following: "1. 'School district' shall mean a town school district, a special school district, a cooperative school district, an incorporated school district operating within a city, and a city operating a district school department."

1969]

104-9 Special School Meeting. Amend RSA 197:2 by striking out in line three the following, "ten or more voters, or one sixth of the voters of the district" and inserting in place thereof the following (fifty or more voters, or one fourth of the voters of the district, whichever is less) so that said section as amended shall read as follows: **197:2 Special.** A special meeting of a school district shall be holden whenever, in the opinion of the school board, there is occasion therefor, or whenever fifty or more voters, or one fourth of the voters of the district, whichever is less, shall have made written application to the school board therefor, setting forth the subject matter upon which action is desired.

104-11 Modification of Average Daily Membership. Amend RSA 198:10-a as inserted by 1955, 331:1 and amended by 1963, 242:1 by inserting in line fifteen after the word "entitled" the following: (Furthermore, whenever it shall appear or be made to appear to the state board of education that circumstances have so changed in any school district from one year to another that the use of the previous year's average daily membership is unfair, unjust or inequitable, the state board of education shall determine what changes or modifications should be made to the average daily membership of such district) so that said section as amended shall read as follows: **198:10-a—Time of Computation.** Before June thirtieth in each year the state board of education shall cause to be computed the amount of foundation aid to be paid to eligible school districts in the succeeding fiscal year.

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EXHIBIT

199:2.0

CHAPTER 197

SCHOOL MEETINGS AND OFFICERS

School Meetings		District Officers	
197:1 Annual		197:14 Officers to be Chosen	
197:2 Special		197:15 School Board	
197:3 Raising Money at Special Meeting		197:16 Eligibility	
197:4 Place		197:17 Election	
197:5 Warning		197:18 Term	
197:6 Warrant		197:19 Moderator	
197:7 — Posting		197:20 Clerk	
197:8 — Special Meetings		197:21 Report of Election	
197:9 — By Justice		197:22 Treasurer's Bond	
197:10 — Return; Record		197:23 Treasurer's Duties	
197:11 Voters		197:24 Acting Treasurer	
197:12 — Check-list		197:25 Auditors	
197:13 Wrongful Voting; Penalty		197:26 Vacancies	
		197:27 Report to State Board	

School Meetings

197:1 Annual. A meeting of every school district shall be holden annually between March first and April twentieth, inclusive, for the choice of district officers, raising and appropriating money for the support of schools for the fiscal year beginning July first, next succeeding, and the transaction of other district business.

Sources: RS 70:3. CS 74:1. GS 79:3. GL 87:3. PS 90:1. 1921, 85, V:1. PL 120:1. RL 139:1.

197:2 Special. A special meeting of a school district shall be holden whenever, in the opinion of the school board, there is occasion therefor, or whenever ten or more voters, or one sixth of the voters of the district, shall have made written application to the school board therefor, setting forth the subject matter upon which action is desired.

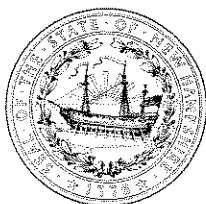
Sources: RS 70:4. CS 74:2. GS 79:3. GL 87:3. PS 90:2. 1921, 85, V:2. PL 120:2. RL 139:2.

197:3 Raising Money at Special Meeting. No school district at any special meeting shall raise or appropriate money nor reduce or rescind any appropriation made at a previous meeting, unless the vote thereon is by ballot, nor unless the ballots cast at such meeting shall be equal in number to at least one-half of the number of voters of such district entitled to vote at the regular meeting next preceding such special meeting; and, if a check-list was used at the last preceding regular meeting, the same shall be used to ascertain the number of legal voters in said district; and such check-list, corrected according to law, may be used at such special meeting upon request of ten legal voters of the district. In case an emergency arises requiring an immediate expenditure of money, the school board may

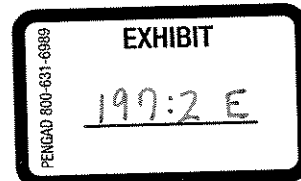
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DEPUTY ATTORNEY GENERAL



News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov